



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2013-0089; FRL-9963-87-Region 1]

Air Plan Approval; ME; New Motor Vehicle Emission Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on August 18, 2015. This SIP revision includes Maine's revised regulation for new motor vehicle emission standards. Maine has updated its rule to be consistent with various updates made to California's low emission vehicle (LEV) program. Maine has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in accordance with the requirements of the Clean Air Act (CAA), as well as to reduce greenhouse gases. The intended effect of this action is to propose approval of Maine's August 18, 2015 SIP revision. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2013-0089 at <http://www.regulations.gov>, or via email to arnold.anne@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1628, fax number (617) 918-0628, email rackauskas.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

II. The California LEV Program

III. Relevant EPA and CAA Requirements

IV. Proposed Action

V. Incorporation by Reference

VI. Statutory and Executive Order Reviews

I. Background and Purpose

On August 18, 2015, the Maine Department of Environmental Protection (DEP) submitted a revision to its SIP consisting of Maine's amended Chapter 127 "New Motor Vehicle Emission Standards." The regulation establishes motor vehicle emission standards for new gasoline powered passenger cars, light-duty trucks, medium-duty vehicles, as well as for heavy-duty diesel vehicles.

A prior version of Maine's Chapter 127 is currently in the Maine SIP. It was effective in the State of Maine on December 31, 2000 and approved by EPA into the SIP on April 28, 2005 (70 FR 21959). The SIP-approved version of Chapter 127 includes California's LEV I and LEV II standards, effective for model years 1994-2003 and 2004-2010, respectively. It does not include the California zero emission vehicle (ZEV) mandate for Maine.

Since that time, Maine has made several revisions to Chapter 127. The version included in Maine's August 18, 2015 SIP revision includes the following requirements, beyond those previously approved into the SIP. The SIP revision includes California's 2007 heavy-duty diesel engine (HDDE) emission standards. This was phased in from 2007 through 2009, with full compliance required for model year 2010 and subsequent engines. The California regulations were identical to EPA's HDDE rule that requires engines to emit 95% less NO_x and 90% less particulate matter (PM) than the previous standards.

Maine's revised regulation also includes requirements for diesel fueled auxiliary power units (APUs). APUs are engines, other than the main vehicle engine, that could be used for heating or cooling a sleeper truck, or powering a refrigerator unit while the main vehicle engine is powered down. The amended Chapter 127 allows truck owners to install either a California certified or a Federal Tier 4 certified APU.¹

Maine's revised rule also includes the California ZEV program. In 2003, the California Air Resources Board (CARB) finalized modifications to the ZEV program that better aligned the requirements with the status of then-available technology development. The updated CARB regulations require that 10% of vehicles be ZEVs starting in 2005, and allow manufacturers to earn and bank credits for those types of vehicles produced before 2005. The program also includes an "alternative compliance path" that allowed advanced technology partial ZEVs (AT PZEVs) (gasoline electric hybrids) to be used to meet ZEV requirements, provided that manufacturers meet a requirement that a portion of the motor vehicle fleet be fueled by hydrogen fuel cells. The modifications to the ZEV program also broadened the scope of vehicles that qualified for meeting a portion of the ZEV sales requirement.

Maine's amended Chapter 127 also reflects changes to California's LEV II program that incorporated motor vehicle greenhouse gas (GHG) emission standards. These standards apply to model year 2009-2016 passenger cars, light-duty trucks, and medium-duty passenger vehicles, and maintain identical standards with California for all vehicle weight classes as required by Section 177 of the CAA. Maine originally adopted the vehicle GHG emission standards as part of their overall goal to reduce GHG emissions to 1990 levels by 2010, with a further reduction of another 10% by 2020.

¹ For information on the Federal Tier 4 diesel program see 40 CFR part 1039.

Additionally, Maine's revised rule includes California's LEV III, updated GHG, and updated ZEV standards and sales requirements. These three items were 'packaged' together by California as part of its Advanced Clean Cars (ACC) program. LEV III standards apply to 2015 and subsequent model year vehicles. The LEV III standards will increase the stringency of PM and evaporative emission standards, and reduce the fleet average hydrocarbon and NO_x emissions to achieve super ultra-low emissions vehicle (SULEV) standards by 2022. The updated GHG rule extends GHG emission standards for all new vehicles up to 10,000 pounds through 2025 and subsequent model years. The updated ZEV regulations apply to any 2018 and subsequent model year passenger cars and light-duty trucks.

Maine's revised rule also requires that vehicles display an environmental performance label. Furthermore, the rule requires that aftermarket catalytic converters be certified to CARB standards as of June 1, 2018.

II. The California LEV Program

CARB adopted the first generation of LEV regulations (LEV I) in 1990, which impacted vehicles through the 2003 model year. CARB adopted California's second generation LEV regulation (LEV II) following a November 1998 hearing. Subsequent to the adoption of the California LEV II program in February 2000, EPA adopted separate Federal standards known as the Tier 2 regulations (February 10, 2000; 65 FR 6698). In December 2000, CARB modified the California LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811). In 2012, CARB 'packaged' the third generation LEV program (LEV III) with updated GHG emission

standards and ZEV requirements as part of the ACC program. EPA granted California a waiver for the ACC program on January 9, 2013 (78 FR 2112).

The LEV II and LEV III regulations expanded the scope of LEV I regulations by setting strict fleet-average emission standards for light-duty, medium-duty (including sport utility vehicles) and heavy-duty vehicles. The standards for LEV II began with the 2004 model year and increased in stringency with each vehicle model year. The LEV III standards began in 2015 and continue to increase emission stringency with each progressive vehicle model year through 2025 and beyond.

The manufacturer must show that the overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits are progressively lower with each model year. The program also requires auto manufacturers to include a “smog index” label on each vehicle sold, which is intended to inform consumers about the amount of pollution produced by that vehicle relative to other vehicles.

In addition to meeting the LEV II and LEV III requirements, large or intermediate volume manufacturers must ensure that a certain percentage of the passenger cars and light-duty trucks that they market in California are ZEVs. This is referred to as the ZEV mandate.

California has modified the ZEV mandate several times since it took effect. One modification allowed an alternative compliance program (ACP) to provide auto manufacturers with several options to meet the ZEV mandate. The ACP established ZEV credit multipliers to allow auto manufacturers to take credit for meeting the ZEV mandate by selling more partial ZEVs (PZEVs) and AT PZEVs than they are otherwise required to sell. On December 28, 2006, EPA granted California’s request for a waiver of Federal preemption to enforce provisions of the ZEV regulations through 2011 vehicle model year. In a letter dated June 27, 2012, CARB requested

that EPA grant a waiver of preemption that allowed updated ZEV regulations as part of the ACC program. These updated ZEV regulations will require manufacturers to produce increasing numbers of ZEVs and plug-in hybrid electric vehicles in 2018 and subsequent years. EPA granted this waiver on January 9, 2013 (78 FR 2112).

On October 15, 2005, California amended its LEV II program to include GHG emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles. On December 21, 2005, California requested that EPA grant a waiver of preemption under CAA section 209(b) for its GHG regulations. On June 30, 2009, EPA granted CARB's request for a waiver of CAA preemption to enforce its GHG emission standards for new model year 2009 and later motor vehicles (July 8, 2009; 74 FR 32744-32784). Approval for updated and extended GHG emissions was granted by EPA as part of the January 9, 2013 ACC waiver (78 FR 2112), which includes regulations that incrementally reduce GHG emissions through 2025 and beyond.

III. Relevant EPA and CAA Requirements

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA shall grant a waiver of the section 209(a) prohibition to the State of California if EPA makes specified findings, thereby allowing California to adopt its own motor vehicle emission standards. Furthermore, other states may adopt California's motor vehicle emission standards under section 177 of the CAA.

For additional information regarding California's motor vehicle emission standards and adoption by other states, please see EPA's "California Waivers and Authorizations" web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This web site also lists relevant **Federal**

Register notices that have been issued by EPA in response to California waiver and authorization requests.

A. Waiver Process

The CAA allows California to seek a waiver of the preemption which prohibits states from enacting emission standards for new motor vehicles. EPA must grant this waiver before California's rules may be enforced. When California files a waiver request, EPA publishes a notice for public hearing and written comment in the **Federal Register**. The written comment period remains open for a period of time after the public hearing. Once the comment period expires, EPA reviews the comments and the Administrator determines whether the requirements for obtaining a waiver have been met.

According to CAA section 209 – State Standards, EPA shall grant a waiver unless the Administrator finds that California:

- Was arbitrary and capricious in its finding that its standards are in the aggregate at least as protective of public health and welfare as applicable Federal standards;
- Does not need such standards to meet compelling and extraordinary conditions; or
- Proposes standards and accompanying enforcement procedures that are not consistent with section 202(a) of the CAA.

The most recent EPA waiver relevant to EPA's proposed approval of Maine's LEV program is "California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope confirmation for California's Zero Emissions Vehicle Amendments for 2017 and Earlier Model Years" (January 9, 2013; 78 FR 2112-2145). This final rulemaking allows California to strengthen standards for LEV regulations and GHG emissions from passenger cars,

light-duty trucks and medium-duty vehicles. It also allows for continuing ZEV regulations by requiring more ZEV manufacturing and sales through 2025 and subsequent years.

B. State Adoption of California Standards

Section 177 of the CAA allows other states to adopt and enforce California's standards for the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. EPA issued guidance (CISD-07-16)² regarding its cross-border sales policy for California-certified vehicles. This guidance includes a list and map of states that have adopted California standards, specific to the 2008-2010 model years. All SIP revisions submitted to EPA for approval must also meet the requirements of CAA section 110(l).

The provisions of section 177 of the CAA require Maine to amend the Maine LEV program at such time as the State of California amends its California LEV program. Maine has demonstrated its commitment to maintain a LEV program through the continued adoption of regulatory amendments to Maine's Chapter 127.

In addition, Maine's August 18, 2015 SIP submittal meets the anti-backsliding requirements of section 110(l) of the CAA. This SIP revision sets new requirements, the California LEV III standards, that are more stringent than the California LEV I and LEV II standards previously approved into the Maine SIP, and expands program coverage to model year vehicles not covered by the California LEV I and LEV II standards, and by extension, not previously included in the Maine SIP. Maine's revised Chapter 127 also includes increasingly

² See EPA's October 29, 2007 letter to Manufacturers regarding "Sales of California-certified 2008-2010 Model Year Vehicles (Cross-Border Sales Policy)," with attachments.
https://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16888&flag=1

stringent GHG emissions and LEV sales requirements that are not currently part of the Maine SIP.

IV. Proposed Action

EPA is proposing to approve, and incorporate into the Maine SIP, Maine's revised Chapter 127 "New Motor Vehicle Standards," effective in the State of Maine on May 19, 2015, and submitted to EPA on August 18, 2015. The Maine Vehicle Emission Standards program amendments adopted by Maine include: the California LEV II GHG program beginning with model year 2009; the California LEV III program beginning with the 2015 model year; the updated California GHG emission standards beginning with model year 2017; and the California ZEV provision (updated in 2012). In addition, Maine's amendments include updated HDDE and diesel APU emission regulations, and the requirement that all aftermarket catalytic converters be CARB certified as of June 1, 2018. EPA is proposing to approve Maine's revised Chapter 127 into the Maine SIP because EPA has found that the requirements are consistent with the CAA.

In addition, EPA is proposing to remove 40 CFR 52.1035, which was promulgated on January 24, 1995 (60 FR 4737). This section states that Maine must comply with the requirements of 40 CFR 51.120, which are to implement the Ozone Transport Commission (OTC) LEV program. As noted above, Maine subsequently adopted the California LEV and LEV II program, that was approved by EPA into the SIP on April 28, 2005 (70 FR 21959). Furthermore, this proposed approval of Maine's revised Chapter 127, if finalized, will add the even more stringent California LEV III standards into Maine's SIP. Thus, Maine has satisfied 40 CFR 52.1035, and therefore, EPA is proposing to remove 40 CFR 52.1035 from the CFR. In addition, on March 11, 1997, the U.S. Court of Appeals for the District of Columbia Circuit

vacated the provisions of 40 CFR. 51.120. *See Virginia v. EPA*, 108 F.3d 1397. Because of the vacatur, EPA concludes that 40 CFR 52.1035 is, in any event, obsolete.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Maine's Chapter 127, "New Motor Vehicle Emission Standards," effective in the State of Maine on May 19, 2015. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 5, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

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